Before the
Federal Communications Commission
Washington, DC

In the Matter of	)	
	)	
Toll Free Service Access	)	CC Docket No. 95-155
	)	
To: The Commission	)	

COMMENTS OF MARK D. OLSON

Mark D. Olson hereby submits comments in conjunction with the Notice of Proposed Rule Making released in this proceeding on October 5, 1995. With respect thereto, the following is stated:

I am writing this response to your proposed rulemaking as the President and owner of a small, privately-held corporation that currently owns and operates two-hundred-three (203) 800 numbers. We have acquired our 800 numbers for the primary purpose of establishing and operating an 800 Wats Call Center to handle incoming calls associated with our advertising and marketing research business.

Just recently, certain common carriers attempted to "steal" our 800 numbers away from us by selectively enforcing ambiguous language in their tariffs, and by claiming that we were "warehousing" 800 numbers and that we did not have "substantial usage." This was attempted even though their sales representatives continuously represented that our business activities and marketing plans were in full compliance. We were never told that our 800 numbers required any certain minimum usage. The carriers continuously represented to us that "you are the customer, you own your 800 numbers, and as long as you pay your bill, we don't care what you do with your 800 numbers." We later discovered that higher-level managers of these same common carriers wanted to find a way to take away our 800 numbers so that they could give them to their larger customers or use them for themselves (many of our numbers our very good "vanity" and numeric 800 numbers, some of which have been in continuous use since 1983.)

In light of that background, I have examined the proposed rulemaking and have fashioned the following comments and response.

First, with respect to the underlying assumption that 800 numbers are a "public resource," this is a disingenuous argument that is only true with respect to the functionality of toll-free telephone service (and the reliability of that service) to all customers on a fair and equitable basis, which includes following the due process of law and concepts of free competition and "number portability." Unfortunately, the proposed rulemaking makes 800 numbers a virtually worthless "public resource" in that the proposed rules favor big business and an illegal "anti-trust cartel" of large carriers who call themselves "the industry." As evidenced by their past business practices, this industry cartel intends to enforce the rules and tariffs it creates for the sole benefit of themselves and their larger, more favored customers. Accordingly, I have chosen to call the proposed 800 number rulemaking the "Selective Enforcement Model." I do this primarily because nowhere in the rulemaking proposal do I see clearly definable "due process of law" for determining which 800 customers and subscribers get to keep their 800 numbers, and which 800 subscribers will have them arbitrarily disconnected and seized under the legal fiction of protecting a "public resource."

The proposed rulemaking appears to provide absolutely arbitrary and capricious "industry" and/or F.C.C. discretion to employ void and ambiguous guidelines as to what constitutes "warehousing," what constitutes "brokerage," what constitutes "substantial usage," and what administrative and legal due process will be followed to determine if an 800 subscriber is in compliance with these rules. As currently proposed, a large carrier or group of carriers, using these rules under the authority of the F.C.C., and hiding under the auspices of "the industry," "industry regulation" and "valuable public resource" language, can effectively use the false pretenses of this legal language to "steal" 800 numbers from small companies and other start-up businesses for the benefit and use of their larger, more favored customers. By simply claiming that these small businesses lack "substantial use," or are "warehousing" or "brokering" 800 numbers, small 800 subscribers and businesses will be subject to arbitrary enforcement procedures that will effectively cutoff their telephone service in "mid-sentence" without due process of law.

Recently, American Express sold its 800 WATS call answering service bureau, which included a very large inventory of 800 telephone numbers. The question that must be asked and answered is this: ...isn't that 800 number brokering?[1] The standard "double-talk" answer by the "industry" was that this was an operational business with established "goodwill" in which the 800 numbers were bundled with other assets. But, under the proposed rulemaking, who will be divined to determine this?...and under what legal guidelines and due process of law will legitimate transactions be determined? There is very little indication of what protections will exist for small businesses and new start-up companies who, in their capital formation process, have little or no 800 wats call volume. In addition, the ability to freely transfer 800 numbers to a new corporate entity may be an integral process of the small business capital funding process. Will this be illegal?

This proposed rulemaking seems to constitute a de facto declaration that existing 800 "service bureaus" (i.e.- West, Matrixx,Wats Marketing), and other large companies with their thousands of 800 numbers, will be "grandfathered-in" (by virtue of their high usage of 800 numbers). Does this mean that any new entrant into the 800 service field will have their 800 numbers disconnected at the whim of the "industry" because they aren't one of the "big boys" and their low 800 call volume is declared to be unworthy of service?

The current proposed rulemaking is an attempt by the "industry" to legitimize their illegal, anti-trust activities, which are disguised as "number administration," with the apparent endorsement of an F.C.C. rulemaking. Pure and simple, however, this illegal cartel should be investigated and prosecuted by the Department of Justice-Antitrust Division. Their behavior is a public shame. It is an even greater shame that they are seeking the endorsement of the F.C.C. under the pretense of a lawful regulatory ruling. The F.C.C. should be encouraged not to be manipulated by "industry" special interests (interests which have little or no regard for the rights of the customer.)

There is no clear "legitimate governmental interest" or "rational basis" for declaring that 800 numbers are a "public resource," any more than any other U.S. NPA area code is a public resource. As we have seen with the numerous NPA area code splits in the past requiring millions of businesses to change their advertising, publications and stationery from time to time, and as evidenced by 888 and the proposed toll-free 877, 866, 855,844,833, and 822 toll free exchanges, it is clear that when a toll-free NPA is exhausted, whether it be 800 or 888, the F.C.C. and numbering administrator will simply "make more."

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[1] At this time I will not address the widespread brokering, warehousing, stockpiling and trading of 800 numbers encouraged and practiced by the major carriers for the benefit of their most favored customers. Neither will I address the reported $166,000 purchase in May 1993 of 1-800-COLLECT by MCI, which seems to be very hypocritical since MCI is another "industry" leader who decries this practice as being "illegal."

To arbitrarily discriminate against small 800 subscribers and start-up businesses who are legitimate bill paying customers with an "industry" rulemaking that will allow their 800 telephone service to be disrupted because they are "not big enough" or their 800 telephone usage is low (and therefore a "public resource" has been unilaterally determined to be "wasted") is an arbitrary and capricious legal concept. In fact, the whole concept of declaring 800 numbers as a "public resource" is very much akin to Nixon or the Hoover-era F.B.I. justifying illegal break-ins and wiretapes in the interest of "national security." With all due respect to the attorneys who developed this theory, this is an absurd concept that has no sustainable legal foundation and which will very likely be declared by a court of law as "void for vagueness" and, when weighed with the ulterior motives of the industry cartel, lacks any "rational basis" or "substantial and legitimate governmental interest."

The truth of the matter is that these proposed rulemakings and "industry regulations" are being promoted by major common carriers who are working with their national database cartel committees. Their sole purpose and intention is to create a legal pretense for "stealing" 800 numbers from their smaller customers in favor of their larger, more favored customers. If they are successful and this rulemaking is approved, this will effectively make 800 wats telephone service a service designed only for existing big businesses and other special interests who have an "inside track" with the F.C.C. and/or a major telephone carrier. The so-called "public resource" will be nothing more than an "industry resource" in which the quest for profits will supersede customer rights. Nobody other than the largest of 800 subscribers will feel assured that their advertising, goodwill and capital investments in their 800 numbers will be secure.

On a side note, we firmly believe that if someone happens to have a "great 800 number" and they decide to sell it to another party for a higher better use, "more power to them." This should be a free market economy. And we believe that the free market economy should decide that issue. If resale of 800 numbers were freely permitted, rather that the current schizo-paranoic approach that proclaims the interests of "national security" and "industry self-regulation," we believe that you would have a "highly liquid secondary market" and would not have the present 800 shortage. Instead of backpeddling from "800 Portability," we believe the Commission should embrace free market principals and take the next step toward total deregulation.

It seems extremely bizarre that the Commission supports the sale, brokering and group ownership of radio and televisions stations in the interest of deregulation...but if the subject is the sale or brokering of an 800 number, of which there are 1,000 times as many in supply as there are radio and televisions stations, the "industry" acts as if the offender should be sentenced to "25 years to life" in "800 Number Prison." We find it hard to reconcile the currently proposed rules and existing industry practices regarding 800 numbers (i.e.- no warehousing, brokering, resale, etc.) when compared to the well-reasoned legal position that the Commission has taken under the Communications Act with respect to the Broadcast Industry Model.

We are opposed to the "industry" lobbying of the F.C.C. to adopt selective, ambiguous "industry-drafted" legal language without defined procedures of due process of law. We believe that if this rulemaking is passed in its currently proposed form, industry-drafted language will allow "anti-small business" criteria to be the standard in which to justify the right to seize and disconnect 800 numbers for assignment to other, "more-worthy" 800 customers. The proposed rulemaking appears to give no regard to the personal situations that small business operators face in the development of their business plans, including the relative scarcity of capital as compared to large corporations, the inherent financial difficulties and low 800 call volume of small start-up businesses, personal health problems of the owners, or other obstacles that interfere with the effective implementation and use of

800 numbers in which to build and develop a small business. As currently proposed, no assurance is given to the small business 800 subscriber that they will not be disconnected "at whim" and without due process of law. Neither is any assurance given to small 800 call answering businesses. The uncertain legal environment that will be created by this proposed rulemaking, with the inherent unfairness of allowing legal language to have 800 numbers to be arbitrarily seized, and hence to effectively deny full and unfettered exercise of "number portability," will make it even more difficult for the small business to receive financing and capital funding for the development of legitimate business enterprises.

In conclusion, the proposed rulemaking essentially gives the F.C.C. and the "anti-trust cartel" of common carriers, who call themselves the "industry," complete autocratic power to decide what is best for us, the customer, including who will be allowed to be in the 800 business and for what purpose. These rules may be O.K. for Fortune 500 corporations who will not be effected since they are "big customers." But for the small 800 subscriber, these proposed rules are illegal and completely disregard concepts of deregulation, free enterprise and "number portability." They also violate concepts of due process of law under the U.S. Constitution and other applicable laws. "Void for vagueness" and without a "rational basis," the proposed rulemaking is completely contradictory to F.C.C. and Congressional pronouncements of "number portability" as a matter of public policy..."in order that the customer will have a choice"... "so as to promote free and open competition." In addition, the proposed rulemaking's provisions to make 800 "usage records" public is a complete invasion of privacy that is designed only to make it easier for the cartel to harass, intimidate and abuse smaller, less powerful 800 subscribers.

From the standpoint of the 800 customer and subscriber, industry "self-regulation" is regulation without representation. At no time has the "customer" ever been an equal participant in the self-regulatory decisions and proposals being made by the "industry." While attempting to "steal" 800 numbers from their own good customers, the "industry" has ironically engaged in continual ex parte communications with F.C.C. staff in an attempt to convince the F.C.C. that there are needs for "stricter rules" to "control customer abuses." The "industry" attempt to pass this rulemaking is, however, nothing more than an attempt to give greater weight of law to their right to control and abuse customers.

I hope the F.C.C. will take a firm stand to protect the rights of the all 800 subscribers, large or small, which includes allowing all customers to fully own, control and dispose of their 800 numbers as they see fit and appropriate for their particular business needs. In that respect, I hope the F.C.C. will restore the spirit of "800 Portability" and put into its rulemaking the type of legal language that will give full effect to what the common carrier service representatives from all major carriers have been telling customers since May 1993...."the customer owns the number, it is an important business asset, and we will never interfere with your rights to telephone service." Only to the extent that this principle is enforced and protected will 800 numbers ever be a true "public resource."

WHEREFORE, it is respectfully requested that these comments be considered in this proceeding.

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Respectfully submitted,

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